(2)

No. 05-1604

Supreme Court, U.S.
FILED
AUG 16 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LOREN SEAGRAVE,

Petitioner,

v.

ROBERT JOE DEAN, PATRICK S. HENRY AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FIRST CIRCUIT

BRIEF IN OPPOSITION

FREDERICK R. TALLEY
Counsel of Record
G. MICHAEL PHARIS
TODD S. MANUEL
TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.
451 Florida Street, 8th Floor
P.O. Box 2471
Baton Rouge, LA 70821
(225) 387-3221

Counsel for Respondents

202893

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	Page
Statement of the Case	1
A. Factual Background	1
B. Proceedings Below	5
Reasons for Denying the Petition	8
A. Petitioner Has Not Asserted Adequate Grounds For The Supreme Court To Exercise Jurisdiction In This Matter.	8
B. Petitioner Incorrectly Assumes That The Louisiana Appellate Court Failed to Review The Entire Record.	10
C. The Weight to be Afforded A Stray Comment	11
Conclusion	12

TABLE OF CITED AUTHORITIES

Page

Cases:

Adams v. Robertson, 520 U.S. 83 (1997) 10

Edelman v. California, 344 U.S. 357 (1953) 9

Manhattan Life Insurance Co. v. Cohen, 234 U.S. 123 (1914) 9

Statutes:

28 U.S.C. § 1257 ..... 8, 9, 10

42 U.S.C. § 2000 9

La. Rev. Stat. Ann. 23:1006 6

Other Authorities:

4 Am. Jur. 2d Appellate Review § 36 10

I

STATEMENT OF THE CASE

A. Factual Background

In August 1983, Loren Seagrave began his employment with Louisiana State University ("LSU") as an Assistant Track Coach III with the LSU Track Team. R. 429, Exh. D-4. Although initially hired to work with both the men and women's track teams, over time Seagrave's duties evolved into primarily coaching female athletes. R.432 In fact, after a successful 1984 season with the women's team, petitioner was promoted to Head Coach of Women's Track. The promotion became effective July 1, 1985. R.432.

In January 1987, Billy Maxwell, LSU's Head Track Coach, announced his resignation. Following Coach Maxwell's resignation, the LSU Athletic Department began the process of hiring a new Head Track Coach. During the hiring process, Seagrave approached then Athletic Director, Robert Joe Dean ("Dean"), and requested that he be considered for the position. R.441, 442. He did not, however, submit a formal application for the position. In fact, prior to speaking with Dean Seagrave had never expressed an interest in the position either verbally or written. Seagrave had supported assistant coach, Samuel Semmes, in his bid for the head coaching job. R,335.

After their initial conversation, Dean advised Seagrave that LSU wanted to hire someone with experience as the head coach of an entire track program and petitioner did not have the required experience. R.335, 336. Dean also told Seagrave that it would be difficult to market an assistant coach to alumni and other supporters of the track program. R.336. Nonetheless, because of petitioner's previous success with

the women's track team, Dean personally requested that he continue working with the track program as Head Women's Track Coach. R.442.

On July 1, 1987, LSU hired Patrick Henry ("Henry") for the Head Track Coach position. R.553, 554; Exh. D-4. Seagrave continued to work with the program just as he had previously done as a member of former Head Coach, Billy Maxwell's staff, working primarily with the women's track team. R.442. In fact, petitioner retained the title of Head Coach of Women's Track.

In the spring of 1989, the LSU track team conducted its annual spring training in Tempe, Arizona. R.269, 487. While traveling home from Arizona, Seagrave informed Henry about an inappropriate relationship between himself and a female athlete. R.269-271. According to petitioner, in July 1988, he and a female athlete spent a night together at a vacant home he owned. R.270, 479, 480. Although Seagrave describes the evening with the athlete as simply a "counseling session," the uncontradicted statement of the female athlete was that she and Seagrave engaged in a physical relationship. Exh. P-15.

Loren Seagrave's decision to bring his relationship with the female to Henry's attention was prompted by his belief that her fiancé had tape recorded a conversation during which he and the fiancé discussed the relationship. R.490-493. Seagrave also believed that the fiancé was possibly waiting at the Baton Rouge airport for the team to arrive and that he may be planning to speak with Dean regarding the relationship. R.270, 271, 377, 492, 493.

Upon arriving in Baton Rouge, Henry contacted his direct supervisor, Assistant Athletic Director, Stephen Carter, and reported the situation involving Seagrave and the female athlete. R.377-379. Henry and Carter then scheduled a meeting with Dean and explained the situation to him. R.341, 342, 380. Seagrave was later asked to meet with Henry, Carter and Dean, and was given an opportunity to explain the nature of his relationship with the athlete. R.344. During the course of the meeting, petitioner did not deny that inappropriate conduct had occurred between himself and the young woman. R.344, 380, 382, 383. At the conclusion of the meeting, Dean asked Seagrave to consider resigning from the program; Seagrave refused to do so. R.282, 353.

After speaking with petitioner, Dean, Carter, Henry also met with the female athlete. R.283. During the course of that meeting, she confirmed her relationship with petitioner and the fact that they had engaged in intimate activities. R.345-347. Following this meeting, Dean, Carter and Henry met with Seagrave a second time to discuss disciplinary measures that would be taken by LSU. R.350, 351. At that time, petitioner was informed that his salary would be frozen and that he would be placed on probation. R.350, 351. On April 5, 1989, Dean forwarded an official letter of reprimand to petitioner. Exh. P-13. The letter informed Seagrave that the Athletic Department would not tolerate inappropriate behavior by members of the coaching staff with athletes and that the reprimand would be placed in his personnel file.

Throughout the course of Dean and Henry's investigation of Seagrave's relationship with the female athlete, care was always exercised to ensure that neither the female nor petitioner would be injured through the public disclosure of their relationship. R.277, 278, 356. In fact, following the

second meeting with Seagrave, Henry instructed him not to discuss the matter with any other members of the track team. R.303-305. Despite Henry's instruction, however, petitioner met with members of the team and told them about his "counseling session" with the female athlete. R.303-305.

In addition to informing other athletes about the "counseling session," Seagrave also spoke with members of the press. R.416, 417. On April 4, 1989, petitioner attended a banquet given in honor of the women's track team. R.408, 409. Also present at the banquet was free-lance writer, Ruth Laney, who was writing an article for *Tiger Rag* magazine. R.408, 409. Following the banquet Laney interviewed Seagrave regarding his role with the track team. R.416. During the course of the interview, he told Laney about his "all-night counseling session" with the female athlete and the Athletic Department's response to the relationship. R.416, 417. Shortly after Laney's interview, an article recounting her conversation with the petitioner was published in *Tiger Rag* magazine. R.414.

On April 12, 1989, petitioner was given notice that his employment would be terminated effective, May 12, 1989 and that he would be reassigned within the Athletic Department and relieved of his duties as an assistant track coach. Exh. P-13. The notice also informed Seagrave that if he wished to protest the action he should notify the Athletic Department prior to the effective date of his termination.

In the April 12th notice of termination, Seagrave was identified by the title, Assistant Track Coach. Although Seagrave was an assistant coach for all intents and purposes, his correct title at the time of the April 12th notice was Head Coach of Women's Track. On April 18, 1989, a second notice

of termination reflecting petitioner's correct title was forwarded to his attention. Exh. P-13. The second notice changed the effective date of his termination to May 15, 1989. The notice also informed him that if he did not wish to avail himself of the temporary assignment, he could use any leave that he may have accumulated up to that point in time. Seagrave's temporary assignment was unaffected by the second notice.

On April 18, 1989, Seagrave filed a grievance with LSU claiming that he was terminated without basis and that LSU did not follow proper procedure. R.6. Although he was an at-will employee, Seagrave was given an opportunity to explain his position during a grievance hearing held on May 9, 1989.[1] R.7. He and his attorney, Alton Moran, met with the Vice Chancellor for Administrative Services to discuss petitioner's termination. Seagrave's termination was not reversed following the grievance hearing and he subsequently filed this suit.

B. Proceedings Below

On January 12, 1990, petitioner, Loren R. Seagrave, filed this lawsuit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana. R.4-12. Respondents, Robert Joe Dean, Patrick S. Henry and The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU") were named as defendants. R.4-12.

---

1. Recognizing petitioner's status as an at-will employee, on July 1, 1991, the Federal District Court for the Middle District of Louisiana held that petitioner was an unclassified employee of the State of Louisiana, employed for an *indefinite* period of time at the will and pleasure of his employer and that he had no property interest in continued employment with the state. R.30.

The crux of Seagrave's suit was that he had been subjected to race-based discrimination under Louisiana Revised Statute 23:1006. Specifically, petitioner claimed that he was terminated from his position as LSU's Head Women's Track Coach because of his marriage to an African-American. R.4-12. Respondents denied petitioner's allegations and maintained that petitioner's employment with the university was terminated because of his inappropriate conduct with a female athlete.

In addition to his claim of race-based discrimination, petitioner also asserted claims under the Louisiana abuse of rights doctrine and for defamation. R.4-12. Essentially, the claims asserted in Seagrave's state court suit mirrored those asserted in a suit that he had previously filed in Federal District Court for the Middle District of Louisiana on May 24, 1989. R.13. The Federal Court suit was dismissed in its entirety without prejudice on February 18, 1992. R.98.

After over ten years of litigation, a trial date was finally set and the matter tried for February 24 - 27, 2003. At the conclusion of petitioner's case, respondents moved for directed verdict based on petitioner's failure to present evidence sufficient to establish his claims of race discrimination, defamation and abuse of rights. R.600. After considering respondent's motion, petitioner's claim of defamation was dismissed. R.606. The court also dismissed petitioner's abuse of rights claim inasmuch as it was encompassed within his race discrimination claim. Consequently, the only claim that was submitted to the jury for consideration was petitioner's race-based discrimination claim related to the termination of his employment with LSU. R.181. After deliberating, the jury returned a verdict against respondents and in favor of the petitioner awarding Seagrave lost wages in the amount of $423,000.00, and general damages in the amount of $350,000.00. R.181.

On April 10, 2003, a Motion for Judgment Notwithstanding the Verdict ("JNOV"), New Trial and Remittitur was filed on behalf of respondents. R.184-187. Within the motion respondents addressed several aspects of the jury's verdict. Specifically, respondents contended that the jury's verdict is unreasonable as a matter of law, tainted by legal error, contrary to the evidence presented at trial and clearly excessive. Following a June 23, 2003, hearing on respondent's Motion for JNOV, the Trial Court entered a ruling upholding the jury's verdict. R.237.

On July 17, 2003, respondents filed a Motion for Suspensive Appeal. R.239, 240. On July 18, 2003, the Trial Court entered an order granting defendants' Motion for Suspensive Appeal to the Louisiana First Circuit Court of Appeal.

On December 9, 2003, an Appeal Brief was filed with the First Circuit Court of Appeal on behalf of respondents. In the appeal respondents requested that the Court reverse the jury verdict that was returned in favor of the petitioner, Loren Seagrave. On August 12, 2004, a three judge panel of the Louisiana First Circuit Court of Appeal heard oral arguments on respondents' assignments of error.

Following the August 12, 2004 arguments, the First Circuit requested that the parties return on October 22, 2004, for an additional hearing before a five judge panel. On June 10, 2005, the First Circuit rendered its ruling completely reversing the jury verdict in favor of Loren Seagrave. The First Circuit held that petitioner failed to meet his burden of proving his racial discrimination claim. The First Circuit also ordered that petitioner bear all costs of the appeal in the amount of $3,093.29.

On June 24, 2005, Loren Seagrave filed an application for rehearing with the First Circuit. The First Circuit denied petitioner's application for rehearing and he subsequently filed a writ application to the Louisiana Supreme Court. A six judge panel of the Louisiana Supreme Court unanimously denied petitioner's writ application. On June 16, 2006, Loren Seagrave file his petition for writ of certiorari with the United States Supreme Court.

REASONS FOR DENYING THE PETITION

A. Petitioner Has Not Asserted Adequate Grounds For The Supreme Court To Exercise Jurisdiction In This Matter.

In his petition for writ of certiorari petitioner asserts that this Court's exercise of jurisdiction is grounded in 28 U.S.C. § 1257. When considered in the context of the longstanding jurisprudence addressing the Court's exercise of jurisdiction under 28 U.S.C. § 1257, however, it clear that the petitioner's claim is not properly before the Court. According to the provisions of 28 U.S.C. § 1257,

> **(a)** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

> **(b)** For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. § 1257.

Petitioner originally filed suit in Federal District Court for the Middle District of Louisiana on May 24, 1989. R.13. On July 16, 1991, the Federal Court dismissed several of petitioner's claims. The remaining claims were later dismissed without prejudice on February 18, 1992. R.98. Although petitioner later filed suit in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana, it is important to note that he did not assert a cause of action under 42 U.S.C. § 2000, which he now claims is the basis for this Court asserting jurisdiction. In fact, after nearly three and a half years of prosecuting this matter through Louisiana appellate courts, only now has petitioner seen fit to attempt to state a cause of action under 42 U.S.C. § 2000.

Petitioner's attempt, however, to invoke the Court's jurisdiction by pleading a cause of action under 42 U.S.C. § 2000 at this late juncture is futile at best. Indeed, the law is "clear that [the] Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised." *Edelman v. California*, 344 U.S. 357, 358 (1953). Not only is it required that a federal question be raised, but it must be raised at the proper time. "It is elementary that a federal question may not be imported into a record for the first time by way of assignments of error made for purposes of review." *Manhattan Life Insurance Co. v. Cohen*. 234 U.S. 123 (1914). Thus, incorporating a federal question for the first time into an assignment of error is not proper.

Without an asserted federal claim, there is no federal question in the present case. Petitioner did not assert a federal discrimination claim in state court; therefore, no federal question or issue was before the state court. "It is not sufficient that a right under a specified provision of the Constitution or Code is merely alleged in a pleading, if the federal question is not sufficiently real or substantial, or if the state court did not pass on the federal question presented in the pleading." 4 Am. Jur. 2d Appellate Review § 36.

"With 'very rare exceptions,' the Court has adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision it has been asked to review. *Adams v. Robertson*, 520 U.S. 83, 86 (1997). According to this Court's holding in *Adams*, when the highest state court is silent on a federal question before it, the Court will assume that the issue was not properly presented and the aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had "a fair opportunity to address the federal question that is sought to be presented." *Adams*, 520 U.S. at 86.

B. Petitioner Incorrectly Assumes That The Louisiana Appellate Court Failed to Review The Entire Record.

Petitioner argues that the Louisiana Supreme Court erred when it affirmed the Louisiana First Circuit Court of Appeal's reversal of the jury verdict on petitioner's employment discrimination claim where the lower court failed to review the record in its entirety. This assignment is premised on an assumption and is unsupported by the record.

Petitioner bases his assumption on a statement in the state appellate court's decision that because "Seagrave failed to meet his burden of proving his racial discrimination claim, it [was] unnecessary for [the court] to address [respondents'] remaining assignments of error." It is the petitioner's contention that a review of respondents' remaining assignments of error would have exposed the court to the entire record. Respondents submit otherwise. Aside from the court's language which fails to establish his point, petitioner can produce not one iota of evidence which even remotely suggests that the appellate court did not review the entire record.

Once the appellate court determined that petitioner had not satisfied his burden of proving race based discrimination there was clearly no need to address the remaining assignments of error. Clearly if there is no finding of discrimination, it only follows that there should not be a find as to damages based on a claim of discrimination. Petitioner's assignment is without merit and constitutes nothing more than an unsupported assumption.

C. The Weight to be Afforded A Stray Comment

Lastly petitioner claims that the Louisiana appellate court did not afford the proper weight to the "stray comment" that he attributed to respondent, Robert Joe Dean. The crux of petitioner's argument is that in making its determination of whether the petitioner satisfied his burden of proof, the appellate court only considered direct evidence and failed to afford the alleged "stray comment" any weight as circumstantial evidence. Again, petitioner's assignment is based on an assumption that is wholly unsupported by the record.

In the conclusion to his petition for certiorari, petitioner states that the appellate court "erroneously ruled that Joe Dean's comment did not amount to direct evidence and, therefore, Loren Seagrave could show no case of discrimination." Petitioner's statement is not only a bold assumption, but also incorrect. Nowhere in the appellate court's ruling does the court even mention the phrase "direct evidence." Instead, the court states that "Mr. Dean's alleged comment did not satisfy the criteria for workplace comments to be *sufficient evidence* of discrimination." (emphasis added). Respondents submit that this assignment is without merit.

CONCLUSION

For all of the foregoing reasons, respondents, Robert Joseph Dean, Patrick S. Henry and The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College respectfully request that this Honorable Court deny the petition for writ of certiorari.

Respectfully submitted,

FREDERICK R. TALLEY
Counsel of Record
G. MICHAEL PHARIS
TODD S. MANUEL
TAYLOR, PORTER, BROOKS
& PHILLIPS L.L.P.
451 Florida Street, 8th Floor
P.O. Box 2471
Baton Rouge, LA 70821
(225) 387-3221

Counsel for Respondents